



Scaling up Safer Consumption Services and the *Respect for Communities Act*: Barriers & Opportunities

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About us

The Canadian HIV/AIDS Legal Network (www.aidslaw.ca) promotes the human rights of people living with and vulnerable to HIV/AIDS, in Canada and internationally, through research, legal and policy analysis, education, and community mobilization. The Legal Network is Canada's leading advocacy organization working on the legal and human rights issues raised HIV/AIDS.

Outline

- 1. Safer consumption services (SCS): context and impact**
2. The legal context for SCS in Canada
3. The *Respect for Communities Act* and why it's harmful
4. Questions for discussion



SCS: global & national context

- 1986: first SCS in Berne (Switzerland)
- 90 SCS currently operating worldwide
- In at least 8 countries and more than 60 cities
- 2 SCS openly operating in Canada, with ministerial exemption, both located in Vancouver.



Quai 9 in Geneva

Positive impact of SCS: Insite data

- Insite is being used by the people it was intended to serve.
- It has reduced HIV risk behavior such as needle sharing.
- It has increased the number of people entering into treatment.
- It has reduced overdose risk and prevented overdose-related deaths.
- It has provided safety for women who use drugs.
- It has also improved public order by reducing the number of public injections and the amount of injection-related litter near the facility.

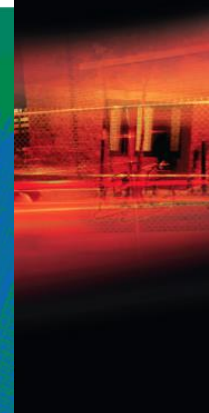
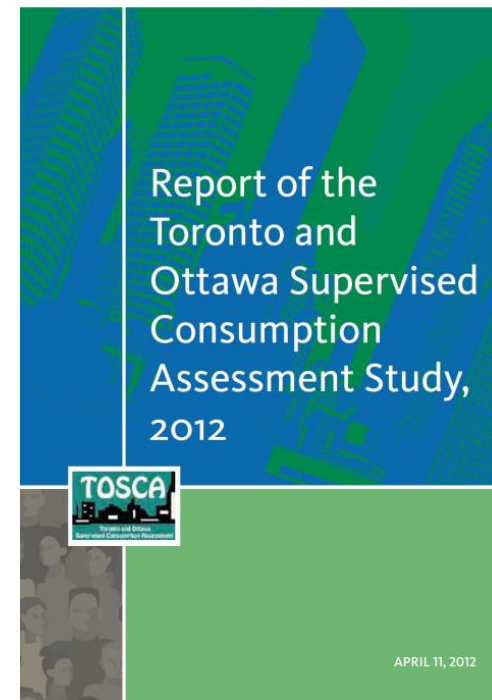
No negative impact of SCS: Insite data

- Insite has not encouraged drug use
- Insite has not led to fewer people attempting to quit problematic use
- Insite has not led to fewer people seeking treatment
- Insite has not led to any increase in drug-related crimes



Do we need more SCS in Canada?

- **In Toronto:** 54% of people who inject drugs injected in a public place such as a washroom or stairwell and 46% injected on the street or in an alley in the past 6 months (TOSCA study).
- **In Ottawa:** HIV prevalence is 11% among people who use drugs, while HCV prevalence is 60% (TOSCA study).
- **In Montreal:** 83 cases of severe overdoses (25 of which were fatal) were investigated in the summer 2014.





Canadian experts widely support SCS

Canadian Medical Association, the Canadian Nurses Association; the Canadian Association of Nurses in AIDS Care; the Registered Nurses' Association of Ontario; l'Ordre des infirmières et infirmiers du Québec; the Canadian Public Health Association; the Health Officers Council of British Columbia; the Urban Public Health Network; Public Health Physicians of Canada; the Toronto Board of Health; the Toronto Chief Medical Officer of Health; Vancouver Coastal Health; l'Institut national de santé publique du Québec; the Expert Advisory Committee on Supervised Injection Sections, established by the federal Minister of Health; Médecins du Monde Canada; Association des médecins spécialistes en santé communautaire du Québec; and l'Association des intervenants en toxicomanie du Québec.



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The legal context in Canada: before RCA

Exemptions under the CDSA – before the RCA

- Before the RCA, section 56 of the *Controlled Drugs and Substances Act (CDSA)* allowed the federal Minister of Health to exempt a service or practice from the provisions of the CDSA when necessary for **medical or scientific purposes**, or **if it is otherwise in the public interest**.
- Without an exemption, clients and staff members of a SCS would be at risk of criminal prosecution for possession of illegal substances under the CDSA (section 4).

Before and since *Insite* at SCC

- In 2008, the Federal Minister of Health refused to extend *Insite*'s exemption.
- In 2011, the Supreme Court of Canada ruled that denying the exemption violated individuals' rights to **life, liberty** and **security of the person** in a way that is both "arbitrary" and "grossly disproportionate," contrary to the *Canadian Charter of Rights and Freedoms* (section 7).
- In response, in 2013 the previous federal government introduced what is now the *Respect for Communities Act*, eventually passed in June 2015.
- Created a new distinct regime – under **CDSA s. 56.1** – for getting an exemption from the CDSA for operating SCS.
- No new SCS in Canada since the 2011 Supreme Court's decision.
 - NB: *Insite* exemption has been renewed; Dr. Peter Centre already operating without exemption.
- Several cities in which service providers are exploring possible SCS or actively preparing applications for CDSA exemptions.
- The RCA will significantly hinder the implementation of new SCS in Canada.

2011 Supreme Court decision

- The Minister of Health must exercise his or her discretion to grant an exemption in accordance with the *Charter*, which guarantees (in section 7) the right not to be deprived of *life, liberty and security of the person* “except in accordance with the principles of fundamental justice.”
- The Minister must strike the appropriate balance between both objectives of the CDSA: public health and public safety.

“Where, as here, the evidence indicates that a supervised injection site will decrease the risk of death and disease, and there is little or no evidence that it will have a negative impact on public safety, the Minister should generally grant an exemption.” (at para. 152)

2011 Supreme Court decision

“...The factors considered in making the decision on an exemption must include evidence, if any, on

- the impact of such a facility on crime rates,*
- the local conditions indicating a need for such supervised injection site,*
- the regulatory structure in place to support the facility,*
- the resources available to support its maintenance, and*
- expressions of community support or opposition.” (at para. 153)*

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What is the RCA?

- The *Respect for Communities Act* (RCA) was introduced as Bill C-2, and enacted, in the last Parliament. It amended the *Controlled Drugs and Substances Act* (CDSA) to create a new, more restrictive legal regime – under s. 56.1 – for ministerial exemptions to operate SCS.
- In summary, the *RCA* will make it more difficult for health authorities and community agencies to offer SCS for people who use drugs.

SUMMARY

This enactment amends the *Controlled Drugs and Substances Act* to, among other things,

- (a) create a separate exemption regime for activities involving the use of a controlled substance or precursor that is obtained in a manner not authorized under this Act;
- (b) specify the purposes for which an exemption may be granted for those activities; and
- (c) set out the information that must be submitted to the Minister of Health before the Minister may consider an application for an exemption in relation to a supervised consumption site.

RCA: cumbersome, biased process easily tainted by misinformation and stigma

- Applicants will be required to submit an onerous amount of information (26 separate items, plus any others that may be required by regulation) to the federal Minister of Health before the Minister *may even consider* an application for an exemption.
- No timeline for a decision once required information is submitted.
- Public notice and comment period (90 days).
- Exemptions will only be granted in “exceptional circumstances” after considering certain (biased) principles (intended to provide statutory language to defend a negative decision if challenged in court).

Why do we think the RCA is harmful?

- An unjustifiably onerous application process:

*“The Minister **may consider** an application for an exemption for a medical purpose under subsection (2) that would allow certain activities to take place at a supervised consumption site **only after the following have been submitted**:*

(a) scientific evidence demonstrating that there is a medical benefit to individual or public health associated with access to activities undertaken at supervised consumption sites; ...

...

*... A **letter** from the provincial minister responsible for health... a letter from the local government of the municipality... a letter from the head of the police force... a letter from the provincial minister responsible for public safety in the province... a letter from the lead health professional, in relation to public health, of the government of the province... **that outlines his or her opinion on the proposed activities.** (extracted from section 56.1 (3)) ... [etc]*

Why do we think the RCA is harmful?

Principles

- It fuels misinformation about supervised consumption services.
- It contradicts the letter and spirit of the Supreme Court of Canada's 2011 decision.

(5) The Minister may only grant an exemption for a medical purpose under subsection (2) to allow certain activities to take place at a supervised consumption site in exceptional circumstances and after having considered the following principles:

- (a) illicit substances may have serious health effects;
- (b) adulterated controlled substances may pose health risks;
- (c) the risks of overdose are inherent to the use of certain illicit substances;
- (d) strict controls are required, given the inherent health risks associated with controlled substances that may alter mental processes;
- (e) organized crime profits from the use of illicit substances; and
- (f) criminal activity often results from the use of illicit substances.

Why do we think the RCA is harmful?

- It allows for decisions to grant or deny exemptions to be based on unjustified, misinformed and/or politically-oriented positions.
- It effectively gives certain authorities unilateral veto power to the implementation of services.
- It does not provide sufficient certainty or protection against arbitrariness.
- It creates unjustified opportunities for public opposition and discrimination against highly marginalized populations.

Resources

- Canadian HIV/AIDS Legal Network & Canadian Drug Policy Coalition, *An Injection of Reason: Critical Analysis of the Respect for Communities Act*, Q&A document (2014), online via www.aidslaw.ca or www.cdpc.ca.
- Global Platform for Drug Consumption Rooms
<http://www.salledeconsoommation.fr/>
- Existing campaigns against RCA and for SCS:
 - CANAC: “Respect communities: Say ‘No’ to Bill C-2”: <http://respectcommunities.ca/>
 - Campaigns for safer consumption sites in...
 - Ottawa: <http://CSCSsottawa.ca/facts>
 - Victoria: www.yes2scs.ca

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Questions

- What do you see as the **major barriers** created by the *Respect for Communities Act* to opening more supervised consumption services?
- What would be a **better set of rules** to govern the opening and operation of a supervised consumption services?
- **What information** should have to be provided (if any) to the federal Health Minister to get an exemption to allow operation of SCS without risk of criminal prosecution?

Thank you.

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